

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	4:05CR3072
)	
v.)	
)	
CLAUDE SLEDGE, III,)	REPORT AND RECOMMENDATION
)	AND
)	ORDER
Defendant.)	

At the conclusion of the hearing on the defendant's motion to suppress evidence, I stated my conclusions on the record and my decision to recommend that the motion to suppress be denied.

In addition to the findings I made orally, I make these additional findings.

Both Lincoln Police Officer Smith and Lincoln Police Officer Clarke knew the defendant from past experiences with him. They both knew him to behave aggressively, either verbally or physically or both, and to be "non-compliant" when confronted by police or taken into custody. They both also knew that the department had placed a "G Flag" on its records on the defendant, meaning that he was either known or suspected at some time of having gang associations.

Officer Smith saw the defendant turn away from Officer Clarke during the latter's attempt to pat down the defendant. The turn was of his own volition and not by the officer or at the officer's direction. Smith also saw defendant attempt to flee.

With his prior knowledge of defendant, Officer Clarke feared for his own safety at the time defendant dropped his arms for the second time, believing that defendant may have a gun. At that point Officer Clarke instructed defendant to put his arms up again, or he would be arrested. Defendant did put his arms up briefly, but he then "took off" running. Although he was angry, defendant did not attempt to assault Officer Clarke, and did not threaten him explicitly.

The actions of Officers Clarke and Kocian in apprehending defendant and taking him to the ground to restrain him with handcuffs were objectively reasonable under the circumstances.

IT HEREBY IS RECOMMENDED to the Honorable Richard G. Kopf, United States District Judge, that the motion to suppress, filing 14, be denied in all respects.

FURTHER, IT HEREBY IS ORDERED,

1. The clerk shall cause an expedited transcript of the hearing to be prepared and filed.

2. Counsel are given ten days from the date the transcript is available to counsel for reading in the clerk's office in which to file objections to this recommendation. The parties are notified that failure to object may be held to be a waiver of the right to appeal the district judge's adoption of the recommendation.

3. Trial of this matter is set to commence at 9:00 a.m., October 24, 2005 at 9:00 a.m., before the Honorable Richard G. Kopf in Courtroom 1, United States Courthouse and Federal Building, 100 Centennial Mall North, Lincoln, Nebraska. Jury selection will be held at commencement of trial.

Dated August 15, 2005.

BY THE COURT

s/ *David L. Piester*

United States Magistrate Judge